Waiver of proof of loss may be either, express, *Edgerley v. Farmers' Ins. Co.,* 48 Iowa 644, or inferred from any act of the insurer evincing a recognition of liability or a denial of obligation, exclusively for other reasons, *Lebanon Mut. Fire Ins. Co. v. Erb,* 112 Pa. 149; *Commercial Fire Ins. Co. v. Allen,* 80 Ala. 571. Want of proof of loss, *Graves v. Wash. Marine Ins. Co.,* 94 Mass. 391; *Caledonian Ins. Co. of Scotland v. Traub,* 80 Md. 214; or a defect in same, *State Ins. Co. v. Waackens,* 38 N. J. Law 564; *Metropolitan Acc. Assn. v. Froiland,* 161 Ill. 30, is waived by denial of liability on the grounds that there is no contract at all, *Rathbone v. City Fire Ins. Co.,* 31 Conn. 193. Such denial, however, must be made by an agent capable of waiving such proof, *Aetna Ins. Co. v. Shryer,* 85 Md. 362; *East Texas Fire Ins. Co. v. Coffee,* 61 Tex. 287; and be made to beneficiary and not to a third person, *Employers' Liability Assn. Corp. v. Rochelle,* 35 S. W. 869. This rule is in harmony with the elementary principle that a party who places his refusal upon one ground, cannot after action brought, charge to another and different one, *Aetna Ins. Co. v. Shryer, supra.*

JUDGMENT—PERSONS CONCLUDED—RUMFORD CHEMICAL WORKS V. HYGIENIC CHEMICAL CO., 148 FED. REP. 862.—*Held:* That one is not bound as a privy merely because he contributes to the defence, without having the right to control the proceedings or to appeal from the judgment or decree.

Parties to be bound by a judgment are all persons having a right to control the proceeding, to make a defence, to adduce and cross-examine witnesses and to appeal from the decision of an appeal lies, 1 *Greenleaf Ev.,* Section 535; *Peterson v. Lothrop,* 34 Pa. 223; all these privileges are essential and only those who had enjoyed them collectively are concluded by a judgment, *Cecil v. Cecil,* 19 Md. 72. General rule is that mere contribution to the defence will not make a judgment binding on a party outside of record. *Goodnow v. Stryker,* 62 Iowa, 221; *Lebanon v. Mead,* 64 N. H. 8; *Gaytes v. Franklin Nat. Bank,* 85 Ill. 256; not even if one contributes to the employment of counsel for parties to the suit, *Lownsdale v. City of Portland,* Fed. Cases, No. 8578, (1 Or. 381). The exceptions are well defined and supported by numerous cases. Whenever a tenant, agent or servant, or other party to a relation, contractual or representative, is defended by his landlord, principal or master, respectively, the judgment is binding on the latter. *Castle v. Noyes,* 14 N. Y. 329; *Thomsen v. McCormick,* 136 Ill. 135.

LANDLORD AND TENANT—LEASE—CROPS—LIEN.—THOSTESEN V. DOXSEE ET AL., 110 N. W. 567 (NEB.).—*Held,* that a clause in a lease attempting to create a lien on the crops to be raised on the leased premises for the payment of rent reserved is ineffectual to create either a legal or equitable lien on the crops grown thereafter on the leased premises.

It has been held that a stipulation that future acquired property shall be held for security for some present engagement is an executory agreement of such a character that a creditor may under it take the property into his possession when it comes into existence and the lien will be good. *Butt v. Ellett,* 19 Wall. 544. But in most jurisdictions the agreement itself, although it may be a license to take possession subsequently, *Holoyd v. Marshall,* 10 H. L. Cas. 215, being an attempt to contract for something not having even a potential existence, *Moody v. Wright,* 13 Met. 17; *Williman v. Neher,* 20 Barb. S. C. 37, creates neither a lien nor a right of property, *Long v. Hines,* Ho. Kan. 220; *Williams v. Briggs,* 11 R. I. 476, until by "a new intervening

act," after the property is acquired, the possession is given to the creditor. *Newton v. Withey,* 5 Vt. 97; *Brown v. Neilson,* 61 Neb. 765.

MASTER AND SERVANT—INJURIES TO SERVANT—WARNING—DELEGATION OF DUTY.—HENDRICKSON V. UNITED STATES GYPSUM CO., 110 N. W. 322 (IA.).—*Held,* that the duty of a master operating a mine to warn employees of an expected explosion in blasting was one which could not be delegated to a fellow servant of the person injured. Bishop, J., *dissenting.*

A master in delegating one servant to warn a fellow-servant of a special danger, does so at his peril, *Wheeler v. Wason M'f'g Co.,* 135 Mass. 294; and so where the employer places his employees where there is unusual danger, even though a foreman directs the work, *Thompson v. Chicago M. & St. P. Ry. Co.,* (*C. C.*), 14 Fed. 564; also where an apprentice was killed while working under the direction of his tradesman, *Missouri Pac. Ry. Co. v. Peregoy,* 36 Kan. 424. But where a servant was injured through negligence of one whose duty it was to give signal when a bale was about to be lowered into a ship, it was held that the master was not liable, *Cheeney v. Ocean S. S. Co.,* 86 Ga. 278; and where a section hand was killed while working on the railroad under the direction of a foreman, no money could be had against the railroad company, *Shea v. Pa. R. Co.,* 13 Atl. 193. However, the tendency of the courts is to lay down the rule that a master cannot by delegating his authority to another, avoid liability and the presumption as to the point in question is in favor of the plaintiff. *F. T. Smith Oil Co. v. Slover,* 58 Ark. 168; *Carlson v. Northwestern Tel. Exch. Co.,* 63 Minn. 428.

MASTER AND SERVANT—INJURIES TO THIRD PERSONS—SCOPE OF EMPLOYMENT.—ST. LOUIS SOUTHWESTERN RY. CO. V. BRYANT, 99 S. W. 693 (ARK.)—*Held,* that where the foreman of a bridge gang employed by a railroad threw from a moving train a water cooler belonging to him, whereby plaintiff was injured, and there was no evidence tending to show that it was in the line of his duty to provide appointments for the cars, his act was not one for which the railroad company could be held liable as within the scope of his employment.

In determining the question of authority the object, purpose, and end of the employment are to be regarded; and in every instance it becomes a mixed question of law and fact, to be settled by the peculiar facts and circumstances, *Cooley on Torts,* (3d Ed.) 1035, which have not always been consistently interpreted. Thus where a section foreman used a hand car in his own business and negligently injured one at a crossing, the company was held not liable. *Branch v. International, etc., Ry. Co.,* 92 Tex. 288; *contra, Salisbury v. Erie R. R. Co.,* 66 N. J. L. 233. And compare *Ritchie v. Waller,* 63 Conn. 155 with *McCarthy v. Timins,* 178 Mass. 378. But where a brakeman threw a stone at a boy who had been trespassing, and the stone struck another person, the act was declared not done in behalf of the railroad company which was accordingly not liable. *Georgia R. and Banking Co. v. Wood,* 94 Ga. 124. And where the defendant's driver injured a boy, the defendant's liability was said to be contingent upon whether the act was to gratify personal malice or to remove the boy from the wagon. *Brennan v. Merchant,* 205 Pa. 258. In harmony with the present case is *Walton v. New York Cent. Sleeping Car Co.,* 139 Mass. 556, where a sleeping car porter threw from the car a package to his washerwoman, thus injuring the plaintiff. The act was declared outside of the scope of his employment.